

22

Office - Supreme Court, U. S.

JUN 17 1944

CHARLES ELMORE DOWLEY
CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1943.

No. 173

THE LINCOLN NATIONAL LIFE INSURANCE
COMPANY OF FORT WAYNE, INDIANA, A
CORPORATION,

Petitioner,

vs.

ELMA CUSTER,

Respondent.

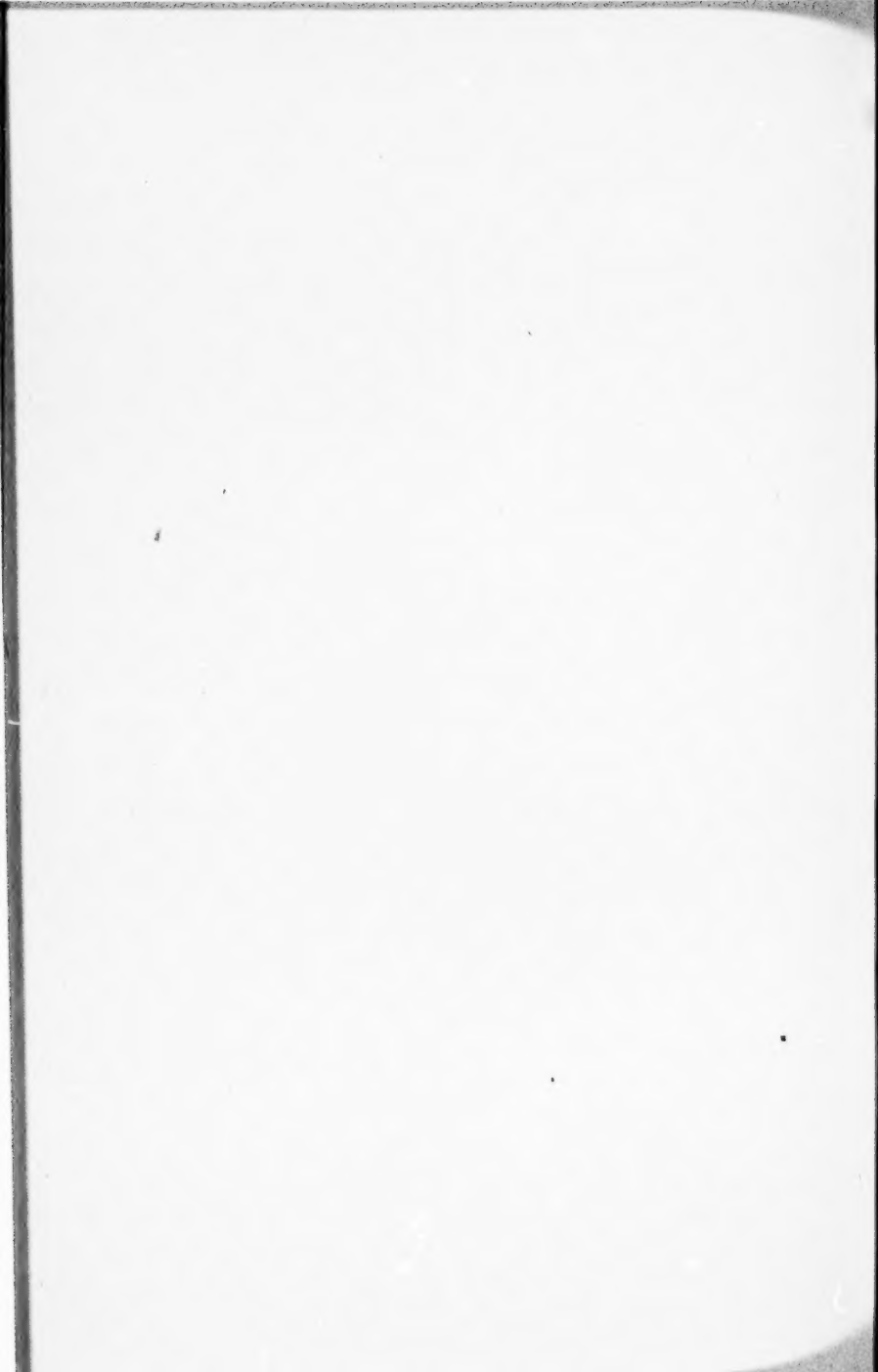
PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SEVENTH CIRCUIT AND BRIEF IN
SUPPORT THEREOF.

WALTER H. ECKERT,

TOM LEEMING,

135 S. LaSalle Street,
Chicago, Illinois,

Attorneys for Petitioner.



INDEX AND SUMMARY OF ARGUMENT.

	PAGE
Petition for Certiorari	1
Basis of Jurisdiction	2
Statement of Matter Involved	2
Questions Presented	4
Reasons for Allowance of Writ	4
Brief in Support of Petition	5
Opinion of Court Below, citation	5
Specification of Errors	5
Statutes Referred to, Text of	6
Summary of Points:	
I. Where a policy of life insurance provides for an additional benefit to be payable if loss of life results from accident, such policy remains a policy of life insurance and does not become also a policy of accident insurance	7
II. Life insurance policies containing provisions granting insurance against death by accident are, by virtue of statute in Illinois, deemed to be policies of life insurance and consequently are not subject to the provisions of the Illinois Statute relating to accident and casualty insurance	9
III. Facts indicating that the entire document No. 463892, including the "rider" providing for additional benefits in case of accidental death attached thereto, constitutes a single life insurance policy, so interwoven that the whole constitutes a single, integral insurance contract and is neither "two physical documents" nor "two independent policies of insurance"	10

IV. The criteria for distinguishing between separate contracts and a severable contract...	16
V. In cases where the question has been squarely presented it has been uniformly held that where a life insurance policy has been issued with a double indemnity rider attached granting additional benefits in the event of accidental death there was but a single contract of insurance.....	22
VI. Even if it were admitted that in this case two contracts of insurance were issued, in the absence of any benefits save those provided for loss of life, then under the statutes of the State of Illinois and the decisions of this and other courts, both of them were contracts of life insurance and not subject to the provisions of the accident and health act	31
VII. Suggestions	32

CASES CITED.

Barnett v. Metropolitan Life Ins. Co., 258 App. Div. 241, 16 N. Y. S. 2d 198; affd. 285 N. Y. 627, 33 N. E. 2d 554	26
Blackburn v. Home Ins. Co. of N. Y., 120 Pac. 2d 31...	26
Bradley v. Marshall, 54 Ill. 173.....	17
Chicago T. & T. Co. v. Robin, 361 Ill. 261.....	18
Commercial Register Co. v. Drew, 168 Ill. App. 347....	19
Connecticut General Life Ins. Co. v. McClellan, 94 F. 2d 445	30
Continental National Bank, etc. v. Chicago, etc., 283 Ill. App. 64	17, 18
Continental, etc. v. Ehrhart, 127 F. 2d 341.....	17
Cook v. Continental Casualty Co., 160 S. W. 576.....	9
Crandall v. Sorg, 198 Ill. 48.....	17
Davis v. Vickers, 11 Ill. 327.....	17
Federal Life Ins. Co. v. Zeber, 82 F. 2d 961.....	8, 29, 31
Globe Mutual Life Ins. Co. v. Meyer, 118 Ill. App. 155..	21
Gould v. Magnolia Metal Co., 207 Ill. 172.....	20
Guardian Life Ins. Co., etc. v. Barry, 10 N. E. 2d 614 (Ind.)	29
Haggerman v. Schulte, 349 Ill. 11.....	19
Heldman v. Gunnell, 201 Ill. App. 172.....	17
Heselberg v. Aetna Life Ins. Co., 102 F. 2d 23.....	30
Hoffman v. Central Surety & Ins. Corp., 297 Ill. App. 371	22
Illinois Match Co. v. C. R. I. & Pac. Ry. Co., 250 Ill. 396	19
Jefferson, etc. v. Heller, 296 Ill. App. 447.....	18
Julius v. Metropolitan Life Ins. Co., 299 Ill. 343, 132 N. E. 435, 17 A. L. R. 956.....	9, 21, 30

Lotus Grain & Coal Co. v. Zimmer, 217 Ill. App. 591.....	20
Maier v. Continental Oil Co., 120 F. 2d 237.....	18
McComb v. Meade, 256 Ill. App. 128.....	20
Miccolis v. Mutual Benefit H. & A. Assn., 115 F. 2d 579.	31
Nelson v. Colgrove & Co. State Bank, 354 Ill. 408.....	17
New York Life Ins. Co. v. Doerksen, 64 F. 2d 240.....	31
New York Life Ins. Co. v. Rositzky, 45 F. 2d 752.....	8
Pacific Mutual Life Ins. Co. v. Parker, 71 F. 2d 872....	7
Rhine v. New York Life Ins. Co., 248 App. Div. 120, 289 N. Y. S. 117, affd. 273 N. Y. 1, 6 N. E. 2d 74, 108 A. L. R. 1197	22
Rubin v. Metropolitan Life Ins. Co., 278 N. Y. 625, 16 N. E. 2d 293.....	25
Straus v. Anderson, 283 Ill. App. 342.....	18
Sullivan v. Penn Mutual L. Ins. Co., 100 F. 2d 560....	28
Webster v. Inland Supply Co., 287 Ill. App. 567.....	22
Zalapi v. Holcomb, etc., 241 Ill. App. 102.....	19

STATUTES CITED.

Cahill's Ill. R. S. 1933, Ch. 73	
Paragraph 341	6, 9, 31
Paragraph 468	6
Paragraph 478	7

IN THE
Supreme Court of the United States

OCTOBER TERM, 1943.

No.

THE LINCOLN NATIONAL LIFE INSURANCE
COMPANY OF FORT WAYNE, INDIANA, A
CORPORATION,

Petitioner,

vs.

ELMA CUSTER,

Respondent.

PETITION FOR WRIT OF CERTIORARI.

*To the Honorable, the Chief Justice, and Associate
Justices of the Supreme Court of the United States:*

Your petitioner, The Lincoln National Life Insurance Company of Fort Wayne, a corporation organized and existing under the laws of the State of Indiana, prays this Court for the issuance of a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit, to review a final judgment of the said Circuit Court of Appeals affirming a judgment of the District Court for the Northern District of Illinois, Eastern Division.

I.

Basis of Jurisdiction.

This is a petition to review on certiorari the decision of the Circuit Court of Appeals for the Seventh Circuit under the provisions of the Judicial Code, Section 240, as amended; Mar. 3, 1911, c. 231, sec. 240, 36 Stat. 1157; Feb. 13, 1925, c. 229, sec. 1, 43 Stat. 938. The decision of the Circuit Court of Appeals was rendered February 15, 1944 (T. 66) and petition for rehearing was denied April 5, 1944 (T. 73). The case is reported below in 141 F. 2d 144 (advance sheets for May 1, 1944).

II.

Short Statement of the Matter Involved.

The action was one at law based upon what is commonly known as a "double indemnity benefit contract" attached to a life insurance policy issued by the respondent to the petitioner's insured. The case was tried to the District Court without a jury, judgment entered for the respondent and affirmed by the Circuit Court of Appeals.

The complaint alleged that because the insured died as a result of bodily injuries accidentally received, the plaintiff was entitled to recover, in addition to the amount specified by the face of the policy (admittedly paid), the sum of \$3,000.00 by virtue of the provisions of the "additional insurance contract doubling benefit in case of accidental death." (T. 23.)

The defense relied upon was that the additional contract specifically excluded from coverage death resulting from homicide, intentional or unintentional, and that the death

of the insured resulted from murder during a holdup. (T. 30.)

The reply of plaintiff to the aforesaid affirmative defense was that "any such provision in the said contract of insurance is illegal and in contravention of the statutory requirements of the State of Illinois," thereafter making specific reference to the statute in question, which relates to companies doing accident and casualty business, and which provides, in substance, that no such policy should be issued unless the exceptions of the policy be pointed with the same prominence as the benefits to which they apply. (T. 31.)

It was stipulated, for the purpose of trial, that the insured was murdered during a holdup. (T. 33.)

The position of petitioner, defendant below, is that the double indemnity rider attached to a life insurance policy and incorporated therein as a part thereof and doing no more than to increase the amount payable if death should result from specified causes is not accident insurance under the pertinent statutes and decisions in the State of Illinois, but is life insurance and that therefore, the provisions of the Illinois act relating to accident and casualty insurance have no application to it. The Circuit Court of Appeals, while noting that the Illinois courts have held this statute to be non-applicable to life insurance contracts (citing *Julius v. Metropolitan Life Ins. Co.*, 299 Ill. 343, 132 N. E. 435, 17 A. L. R. 956) seeks to avoid the effect of such holding by asserting that the defendant insurance company, in effect, issued two independent policies of insurance, one a life insurance policy—the other an accident policy; that the former did not come within the act in question, but that the latter is controlled by it. (T. 69.)

III.

The Questions Presented.

A.

Whether the "double indemnity rider" issued in connection with and as a part of the life insurance policy is a separate contract of insurance.

B.

Whether the "double indemnity rider" is a contract of accident insurance and subject to the provisions of the Illinois Act relating to accident and health insurance, or is life insurance and consequently not subject to the provisions of said Act.

IV.

Reasons Relied on for the Allowance of the Writ.

(a) The decision of the Circuit Court of Appeals in the instant case is in conflict with its own previous decisions on the same subject, with the decisions of Circuit Courts of Appeal of other circuits and with the decisions of this court.

(b) The decision is in conflict with local laws and with applicable local decisions.

Respectfully submitted,

WALTER H. ECKERT,

TOM LEEMING,

Attorneys for Petitioner.

